

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Expanding Flexible Use of the 3.7 to 4.2 GHz
Band

Wireless Telecommunications Bureau Seeks
Comment on PSSI Global Services, LLC Request
for Stay of 3.7-4.2 GHz Band Report and Order
and Order of Proposed Modification

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) GN Docket No. 18-122
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**OPPOSITION OF SES AMERICOM, INC. TO PSSI
GLOBAL SERVICES, LLC'S REQUEST FOR STAY**

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OPPOSITION OF SES AMERICOM, INC. TO REQUEST FOR STAY

Pursuant to 47 C.F.R. § 1.45(d) and the Commission’s *Public Notice*,¹ SES Americom, Inc. (“SES”) opposes PSSI Global Services, LLC’s (“PSSI’s”) Request for Stay of the Commission’s Report and Order and Order of Proposed Modification in this proceeding.²

SUMMARY

This is the second time a disappointed party has asked the Commission to stay its *C-Band R&O*. But PSSI – which leases excess satellite transponder capacity on an Occasional Use (“OU”) basis – does not come forward now with any more substantial reasons to stay the order than the ones that both the Commission and the U.S. Court of Appeals for the D.C. Circuit have already considered and correctly rejected.

¹ *Wireless Telecommunications Bureau Seeks Comment on PSSI Global Services, L.L.C. Request for Stay of 3.7-4.2 GHz Band Report & Order & Order of Proposed Modification*, Public Notice, GN Docket No. 18-122, DA 20-5644 (rel. June 18, 2020) (“*Public Notice*”); see *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report & Order & Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (“*C-Band R&O*”).

² The *C-Band R&O* was published in the Federal Register on April 23, 2020. See 85 Fed. Reg. 22,804 (Apr. 23, 2020).

The *C-Band R&O* is a critical step in the Commission’s comprehensive effort to address the increasing demand for wireless broadband services and radio spectrum through a comprehensive “all-of-the-above” 5G FAST plan.³ That plan is designed to realize 5G’s promise to “transform our economy, boost economic growth, and improve our quality of life” by spurring the development of next generation wireless networks and closing the digital divide.⁴ The plan also advances American leadership in 5G and promotes vital national security interests.

There is broad consensus among all relevant stakeholders that an expedited clearing of the C-Band and deployment of 5G as “quickly as possible” will deliver substantial economic and public interest benefits.⁵ That process is already underway now, with SES and others moving to carry out the transition. All eligible operators have irrevocably elected to meet the Commission’s accelerated clearing deadlines. And for its part, SES has prepared and submitted its Transition Plan carefully outlining its strategy expeditiously to migrate its earth station customers, while investing the significant time and resources necessary to meet its clearing obligations. Other stakeholders have also predicated their investments in next-generation wireless technologies on the *C-Band R&O* and an expedited clearing process.

Despite the profound societal benefits of a speedy C-Band transition, and the costly and time-consuming activities eligible operators are engaged in to make that transition a reality, PSSI seeks to delay it indefinitely while it pursues a misguided appeal of the *C-Band R&O* in the D.C. Circuit. But, as the Commission’s recent *Denial Order*⁶ demonstrates, PSSI cannot make the

³ *C-Band R&O* ¶ 1.

⁴ *Id.* ¶ 3.

⁵ *Id.* ¶ 185.

⁶ Order Denying Stay Petition, DA 20-609, (rel. June 10, 2020) (“*Denial Order*”).

“strong showing”⁷ required to obtain such “extraordinary” relief.⁸ Instead, PSSI largely recycles legal arguments the Commission soundly rejected just two weeks ago – and that the D.C. Circuit itself rejected earlier this week for failure to “satisf[y] the stringent requirements for a stay pending appeal.”⁹ PSSI comes forward with no evidence of *any* harms it would actually suffer absent a stay. At best, it demonstrates that its business is dying, which is a hard but inescapable reality that was not caused – and cannot be fixed – by any stay of or challenge to the *C-Band R&O*. Whatever harms PSSI may one day suffer are economic losses that cannot support a stay as a matter of law in any event. Against such imaginary and flimsy harms, a stay would wreak havoc on the stakeholders like SES charged with implementing the transition and will undermine the public interest.

The Commission should deny the Request.

DISCUSSION

To obtain a stay, PSSI must make a “strong showing” that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) other parties will not suffer substantial harm if a stay is granted; and (4) a stay is in the public interest.¹⁰ PSSI does not come close to meeting any of these “stringent requirements.”¹¹

⁷ *In the Matter of Amend. of Parts 73 & 76 of the Comm’n’s Rules Relating to Program Exclusivity in the Cable & Broadcast Industries*, Order Denying Stay Request, 4 FCC Rcd 6476, ¶ 6 (1989) (“*Parts 73 & 76 Order*”).

⁸ *See Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958); *In the Matter of Arizona Public Service Co. & Nextel Comm’n’s, Inc.*, Order Denying Stay Request, 30 FCC Rcd 3757, ¶ 10 (2015).

⁹ Order, *PSSI Glob. Servs., LLC v. FCC*, No. 20-1142, Doc. 1848533 (D.C. Cir. June 23, 2020).

¹⁰ *Virginia Petroleum Jobbers Ass’n*, 259 F.2d at 925; *Parts 73 & 76 Order* ¶ 6.

¹¹ *CREW v. FEC*, 904 F.3d 1014, 1016 (D.C. Cir. 2018); *Parts 73 & 76 Order* ¶ 6.

I. The Commission Has Reasonably And Repeatedly Rejected PSSI's Arguments And They Are Unlikely To Succeed On Appeal.

PSSI's Request recycles arguments the Commission already considered and rejected, including most recently in its *Denial Order*.¹² Nevertheless, PSSI again argues the Commission exceeded its modification authority by "fundamentally changing" its authorizations.¹³ But as the Commission has now made clear twice, PSSI's argument "lacks merit" because the agency's exercise of its modification authority was "thoroughly justified" and grounded in the law and its own precedent.¹⁴ And PSSI's "fundamental change" theory does not even make any sense given it may still provide the same OU services as before the *C-Band R&O*.¹⁵

PSSI also previously argued the Commission failed to provide it notice of its intent to modify the "uplink portion of PSSI's Licenses," which it alleges constitutes an unlawful "sanction."¹⁶ PSSI is doubly mistaken. *First*, PSSI had ample notice of the transition for years and participated extensively in the FCC proceedings leading to the *C-Band R&O*.¹⁷ *Second*, the Commission rejected PSSI's claim that it acted on PSSI's licenses.¹⁸ The Commission found

¹² See *Denial Order*.

¹³ Request for Stay ("Req.") ¶¶ 48–57.

¹⁴ *Denial Order* ¶ 21; see *id.* ¶¶ 17–25.

¹⁵ *Id.* ¶ 14; *C-Band R&O* ¶ 47 n.149.

¹⁶ Req. ¶¶ 58–60; Comments of PSSI Global on SSO Joint Petition for Stay, GN Docket No. 18-122, at 17 ¶¶ 34–35 (filed May 27, 2020).

¹⁷ *Denial Order* ¶ 21 n.99; see also Letter from Robert Lamb, CEO, PSSI, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-183 (filed Nov. 15, 2017); Letter from Steven Díaz Gavin, Counsel to PSSI, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Oct. 18, 2019); Letter from Steven Díaz Gavin, Counsel to PSSI, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Nov. 15, 2019); Comments of PSSI, GN Docket No. 18-122 (filed February 20, 2020).

¹⁸ *Denial Order* ¶¶ 21; *id.* n.93; *C-Band R&O* ¶ 148.

that, while the order may have some impact on its ability to operate in the C-Band, PSSI holds “no licensed spectrum usage rights in the C-Band.”¹⁹ And based on the record, the Commission concluded that any incidental impact on PSSI’s uplink authorizations will not impair its ability to provide service.²⁰

PSSI again argues the *C-Band R&O* violates the Open-market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”) as well.²¹ But the “auctioned spectrum would be used for a new *domestic*” and “*non-satellite*” terrestrial service, not any service within the purview of the ORBIT Act.²²

Given the Commission’s reasonable and evidence-based rejection of PSSI’s assorted arguments, they are unlikely to carry the day on appeal – especially when its arguments are reviewed for a third time through the “daunting” lens of agency deference.²³ That deference is at its apex, where, as here, the Commission exercises its expert “predictive judgment”²⁴ on “where the public interest lies”²⁵ in the highly-technical area of spectrum management.²⁶

¹⁹ *Denial Order* ¶ 21; *id.* n.99; *C-Band R&O* ¶ 147.

²⁰ *Denial Order* ¶ 21; *id.* n.93; *C-Band R&O* ¶ 147.

²¹ Req. ¶¶ 39–46 (citing 47 U.S.C. § 765(f)).

²² *C-Band R&O* ¶ 62; Reply Comments of the American Cable Association, GN Docket No. 18-122, at 15–16 (filed Dec. 11, 2018); *see Northpoint Tech., Ltd. and Compass Sys., Inc. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005) (holding Commission could not assign by competitive bidding domestic satellite communications spectrum that left open the possibility for future international satellite use under the ORBIT Act).

²³ *NTCH, Inc. v. FCC*, 950 F.3d 871, 880 (D.C. Cir. 2020).

²⁴ *Earthlink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006).

²⁵ *Telocator Network of Am. v. FCC*, 691 F.2d 525, 538 (D.C. Cir. 1982).

²⁶ *Earthlink, Inc.*, 462 F.3d at 12; *Teledesic LLC v. FCC*, 275 F.3d 75, 84 (D.C. Cir. 2001); *Telocator Network of Am.*, 691 F.2d at 538; *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981).

II. PSSI Will Suffer No Harm Absent A Stay.

PSSI's appeal is not only likely to fail on the merits, but PSSI will not suffer any harm from the *C-Band R&O* – let alone any irreparable harm – before that day comes. As an initial matter, the evidence shows PSSI's alleged harms flow from competitive forces, not the *C-Band R&O*.²⁷ The Commission found transponder demand is “expected to decline” over the next ten years²⁸ because “customers may need fewer transponders.”²⁹ Data released just this month confirms that hard reality: C-Band OU services will be rendered *obsolete* by “the increasing availability of fiber optic alternatives” and “the gradual transition” to facilities in other bands.³⁰ Indeed, PSSI concedes, as it must, that reduction in OU capacity was “already occurring” *years before* the *C-Band R&O*.³¹ Moreover, even if its declining business were somehow linked to the *C-Band R&O*,³² such economic harm is not irreparable as a matter of law.³³

But even indulging the fantasy that PSSI's harms stem from the *C-Band R&O*, rather than market forces, PSSI offers nothing new to counter the Commission's recent findings in the *Denial Order* that its harms are imaginary and unfounded.³⁴ Other than a self-serving and

²⁷ Req. ¶¶ 20–22; Decl. of Robert C. Lamb (“Lamb Decl.”) ¶ 22; *see Wis. Gas Co. v. FERC*, 758 F.2d 669, 674–75 (D.C. Cir. 1985) (“[T]he court must decide whether the harm will *in fact* occur [absent a stay].”).

²⁸ *C-Band R&O* ¶ 239 n.620.

²⁹ *Denial Order* ¶ 21.

³⁰ Letter from Brian D. Weimer, Counsel to SES, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1–2 (filed June 17, 2020) (“OU *Ex Parte*”).

³¹ Req. ¶¶ 20–21.

³² *Id.* ¶¶ 20 & 22–23.

³³ *Denial Order* ¶ 12; *see also Wis. Gas*, 758 F.2d at 674.

³⁴ *Denial Order* ¶¶ 14 & 21; *Wis. Gas*, 758 F.2d at 674 (“[T]he injury must be both certain and great; it must be actual and not theoretical.”).

conclusory affidavit, PSSSI does not substantiate its implausible assertion that OU services and its business will cease to exist if the *C-Band R&O* “is allowed to stand.”³⁵ That dire prediction is demonstrably false. It is contradicted by the Commission’s record-backed finding that the *C-Band R&O* will not impact PSSSI’s services.³⁶ It is contradicted by the Commission’s finding in the *Denial Order* that OU providers will need only a “limited number of transponders”³⁷ and capacity as customer needs decline.³⁸ And it is contradicted by the representations of SES and other incumbent operators that they “undoubtedly will have ample supply of C-[B]and capacity” and “can continue to provide needed OU capacity” post-transition.³⁹ In the unlikely event transponder demand somehow “outpace[s] supply,” incumbent operators also could “launch additional satellites to add more transponders”⁴⁰ outside of the video distribution arcs, assuming it is economically rational to do so.

As the Commission has also already found, there is nothing “imminent” about PSSSI’s speculative harms in any event.⁴¹ If PSSSI’s parade of horrors ever comes to pass, it will be more than a year from now “at the earliest.”⁴² That is no reason for a stay, and PSSSI certainly cannot claim any irreparable harm based on what the market and its services may look like

³⁵ Req. ¶ 20.

³⁶ *C-Band R&O* ¶¶ 47 n.149 & 148.

³⁷ *Id.* ¶ 47 n.149.

³⁸ *Denial Order* ¶ 21 (citing *C-Band R&O* ¶ 147).

³⁹ OU *Ex Parte* at 1 & 3.

⁴⁰ *Denial Order* ¶ 21.

⁴¹ *Id.* ¶ 14.

⁴² *Id.* ¶ 8.

“years from now.”⁴³ This obvious – and fatal – lack of immediacy is perhaps why PSSI waited *months* to move to stay the order and only did so after the Commission and the D.C. Circuit rejected another, similar bid. Indeed, PSSI’s unexplained delay in seeking a stay itself “weighs against a finding of irreparable harm here.”⁴⁴

While PSSI finally complains about “excessively high-power levels of operations” in the C-Band and a dearth of filtering solutions,⁴⁵ the Commission found based on the record evidence that its current protective measures “have been successfully used to prevent harmful interference from similar services” and there is “no demonstrated reason to change” its practices.⁴⁶ And here, PSSI offers nothing new in response to the Commission’s recent determination in the *Denial Order* that PSSI had failed to identify “any technical constraints that would prevent filters from being developed” for PSSI’s stations.⁴⁷ Any such constraints would only trigger pecuniary (not irreparable) harm anyway, and the Commission already determined such harms are readily redressable.⁴⁸ The *C-Band R&O* indeed expressly sets forth mechanisms for PSSI to obtain necessary filters.⁴⁹

⁴³ *Id.*

⁴⁴ *Guttenberg v. Emery*, 26 F. Supp. 3d 88, 103 (D.D.C. 2014); *see also Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (per curiam) (“Our conclusion that an injunction should not issue is bolstered by the delay of the appellants in seeking one.”).

⁴⁵ Req. ¶¶ 7, 25, 29 & 37.

⁴⁶ *C-Band R&O* ¶¶ 345–46.

⁴⁷ *Denial Order* ¶ 21.

⁴⁸ *Id.* ¶ 14.

⁴⁹ *Id.* ¶¶ 14 & 21.

III. A Stay Would Harm SES And Other Vital Stakeholders.

While PSSI has demonstrated no need for a stay, one would seriously harm SES and other stakeholders mandated to carry out the *C-Band R&O* transition. All eligible space station operators, including SES, have irrevocably elected to clear the C-Band on the Commission's expedited schedule,⁵⁰ submitted time-intensive Transition Plans,⁵¹ and made substantial financial and contractual commitments to meet their clearing obligations.⁵² Any stay of the *C-Band R&O* would bring those activities to a halt and prevent SES from completing them on time and without significant delays. Disrupting SES's ongoing and carefully orchestrated transition activities will threaten its ability to transition services on an expedited basis, and cast doubt on its ability to obtain accelerated relocation payments.⁵³

⁵⁰ See Accelerated Relocation Election of Claro S.A. f/k/a Star One S.A., GN Docket No. 18-122 (filed May 28, 2020); Accelerated Relocation Election of Eutelsat S.A., GN Docket No. 18-122 (filed May 27, 2020); Accelerated Relocation Election of Intelsat License LLC, GN Docket No. 18-122 (filed May 27, 2020); Accelerated Relocation Election of SES Americom, Inc., GN Docket No. 18-122 (filed May 26, 2020); Accelerated Relocation Election of Telesat, GN Docket No. 18-122 (filed May 26, 2020).

⁵¹ Transition Plan of Eutelsat S.A., GN Docket Nos. 18-122 & 20-173 (filed June 19, 2020); Telesat C-band Transition Plan (for US), GN Docket Nos. 18-122 & 20-173 (filed June 19, 2020); Transition Plan of Claro S.A., GN Docket Nos. 18-122 & 20-173 (filed June 19, 2020); Intelsat C-Band Clearing Transition Plan, GN Docket Nos. 18-122 & 20-173 (filed June 19, 2020); SES Americom, Inc. Accelerated C-band Transition Implementation Plan, GN Docket Nos. 18-122 & 20-173 (filed June 19, 2020).

⁵² Opposition of CTIA to Joint Petition for Stay of Report & Order & Order of Proposed Modification Pending Judicial Review, GN Docket No. 18-122, at 16–17 (filed May 27, 2020) (“CTIA Comments”); Comments of Eutelsat S.A., GN Docket No. 18-122 (filed May 27, 2020); Opposition to Small Satellite Operators’ Petition for Stay of the C-Band Report & Order by Intelsat, GN Docket No. 18-122, at 4–5 (filed May 27, 2020) ; Opposition to Small Satellite Operators’ Petition for Stay of the C-Band Report & Order by Telesat, GN Docket No. 18-122, at 3 & 5 (filed May 27, 2020) (“Telesat Comments”).

⁵³ Telesat Comments at 5.

A stay would also harm other stakeholders. Future overlay licensees have “predicated” their investments in next-generation wireless technologies on an auction happening “this year” to bid on “critical” C-Band spectrum.⁵⁴ Prompt access to the C-Band “will facilitate the key attributes that make 5G a breakthrough enabler of innovation” and “contribute to substantially lower costs for consumers.”⁵⁵ Any delay in that planned transition will foster “tremendous uncertainty and [chill] investment” necessary for the expedited deployment of 5G.⁵⁶ PSSI cannot obtain relief that will cause others such severe harms.⁵⁷

IV. A Stay Would Frustrate The Profound Public Interest Benefits Of An Expeditious Clearing Of C-Band Spectrum.

PSSI says a stay will not harm the public interest, and any harm to other parties or the public is “outweighed” by its alleged harms in any event.⁵⁸ Not so.

The Commission has repeatedly found that delaying an accelerated transition would gravely harm the public interest.⁵⁹ Every year of delay would reduce “consumer welfare” by \$15 billion and the value of repurposing the C-band by 7-11%.⁶⁰ Economist Coleman Bazelon, for example, estimated that “every \$1 billion in delay costs would create total social costs” of \$10-

⁵⁴ CTIA Comments at 16–17 (emphasis omitted).

⁵⁵ *Id.* at 17–18.

⁵⁶ *Id.* at 19.

⁵⁷ *Virginia Petroleum Jobbers Ass’n*, 259 F.2d at 925.

⁵⁸ Req. ¶ 61.

⁵⁹ *Denial Order* ¶¶ 27 & 29; *see C-Band R&O* ¶ 20.

⁶⁰ *C-Band R&O* ¶ 185.

20 billion.⁶¹ Accordingly, any delay in the 5G transition would substantially reduce the “value of repurposing the C-Band” and impose serious “social costs.”⁶²

A delay would also imperil national security interests by slowing U.S. progress in 5G deployment.⁶³ That would only aid authoritarian nations seeking to assert leadership in advanced telecommunications networks so they can exploit them against American interests.

CONCLUSION

The Commission should deny the Request.

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⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*, Statement of Chairman Pai at 1.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2020, a copy of the foregoing Opposition was sent by electronic mail to the following:

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